

REMARKS

Claim Rejections – 35 U.S.C. § 103 Over Weaver In View of Gaukel

Claim 1 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Weaver, *et al.* (U.S. Publication No. 2004/0116781) (hereafter ‘Weaver’) in view of Gaukel, *et al.* (U.S. Patent No. 6,100,806) (hereafter ‘Gaukel’). The question of whether Applicants’ claim is obvious or not is examined in light of: (1) the scope and content of the prior art; (2) the differences between the claimed invention and the prior art; (3) the level of ordinary skill in the art; and (4) any relevant secondary considerations, including commercial success, long felt but unsolved needs, and failure of others. *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1729-1730, 82 USPQ 1385 (2007). Although Applicants recognize that such an inquiry is an expansive and flexible one, the Office Action must nevertheless demonstrate a *prima facie* case of obviousness to reject Applicants’ claim for obviousness under 35 U.S.C. § 103(a). *In re Khan*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). To establish a *prima facie* case of obviousness, the proposed combination of Weaver and Gaukel must teach or suggest all of Applicants’ claim limitations. MPEP 2142 (citing *In re Royka*, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974)). As shown below in more detail, the proposed combination of Weaver and Gaukel cannot establish a *prima facie* case of obviousness because the proposed combination does not teach each and every element of the claim of the present application. As such, Applicants respectfully traverse the rejection individually.

1. A method for creating a user metric pattern, the method comprising:

receiving, within a network, a plurality of disparate user metrics from a metric sensor worn by the user, wherein the user metrics represent indications of user conditions, wherein the user condition is selected from the group consisting of:

body temperature, blood pressure, heart rate, and galvanic skin response;

saving the plurality of disparate user metrics;

editing the subset of the saved disparate user metrics including receiving an editing instruction from a user identifying a user metric and deleting the user metric identified in the editing instruction;

identifying a subset of the saved disparate user metrics that comprise a user metric pattern comprising mining the saved disparate user metrics, wherein a user metric pattern is comprised of a plurality of predetermined generic metrics not created specifically for the user and determined to comprise a metric pattern representing a metric state common to many users;

storing the subset of the saved disparate user metrics as a user metric pattern, further comprising:

creating a metric list; and

associating the metric list with a user metric pattern data structure;

associating an action with the metric pattern comprising retrieving an action ID from an action database, wherein the action is designed to administer devices to affect the user metric state defined by the metric pattern.

Weaver Does Not Disclose User Metrics That Represent Indications Of User Conditions

The Office Action takes the position that Weaver at paragraphs 0053-0062 discloses "receiving, within a network, a plurality of disparate user metrics from a metric sensor worn by the user, wherein the user metrics represent indications of user conditions" as claimed in the present application. What Weaver at paragraphs 0053-0062, in fact discloses is behavior indicators that are data from which an actor's behavior can be inferred. Weaver's behavior indicators do not disclose user metrics as claimed in the present application. As recited in claim 1, a user metric is a representation of user condition not a representation of an actor's behavior. That is, Weaver is only concerned with an actor's behavior, actions of a user, not conditions of a user, represented in Applicant's claim 1 by user metrics. Because Weaver is not concerned with conditions of a user, Weaver, not unexpectedly, does not disclose user metrics representing such conditions or receiving such user metrics from metric sensors worn by a user as claimed here. Having not disclosed user metrics Weaver also cannot disclose any of the other

elements of claim 1 of the present application, each of which includes user metrics in some form. The Office Action relies on Weaver as disclosing each and every of the remaining claim elements of claim 1, including for example:

- saving the plurality of disparate user metrics;
- editing the subset of the saved disparate user metrics including receiving an editing instruction from a user identifying a user metric and deleting the user metric identified in the editing instruction;
- identifying a subset of the saved disparate user metrics that comprise a user metric pattern comprising mining the saved disparate user metrics, wherein a user metric pattern is comprised of a plurality of predetermined generic metrics not created specifically for the user and determined to comprise a metric pattern representing a metric state common to many users;
- storing the subset of the saved disparate user metrics as a user metric pattern including creating a metric list and associating the metric list with a user metric pattern data structure; and
- associating an action with the metric pattern comprising retrieving an action ID from an action database, wherein the action is designed to administer devices to affect the user metric state defined by the metric pattern.

As can be seen from this cited portion of claim 1, with emphasis added, each and every element of claim 1 includes user metrics in some form. Weaver only discloses historical behavior indicators that represent an actor's behavior, actions of a user. Weaver does not disclose or suggest user metrics that represent a user's condition as claimed in the present application and as such cannot disclose any element of claim 1 of the present application – not a single one. The Office Action therefore cannot establish a prima facie case of obviousness. The rejections of claim 1 should be withdrawn, and the claim should be allowed.

Applicants respectfully submit that Gaukel also does not disclose such user metrics that represent a user's condition. Gaukel only discloses continuous electronic monitoring and tracking of individuals using Global Positioning Satellite Systems and cellular telephone communications. Gaukel is completely concerned only with tracking individuals, not with a user's condition. As such, Gaukel does not disclose user metrics that represent a

user's condition. Gaukel therefore cannot disclose any element of claim 1 of the present application. Because neither Gaukel nor Weaver, either alone or in combination discloses user metrics as claimed here, the Office Action cannot establish a prima facie case of obviousness and the rejections of claim 1 should be withdrawn.

Conclusion

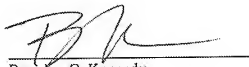
Claim 1 stands rejected for obviousness under 35 U.S.C § 103(a) as being unpatentable over Weaver in view of Gaukel. For the reasons set forth above, however, the proposed combination of Weaver and Gaukel fails to establish a prima facie case of obviousness. The rejection of claim 1 should therefore be withdrawn, and the claim should be allowed. Applicants respectfully request reconsideration of claim 1.

The Commissioner is hereby authorized to charge or credit Deposit Account No. 09-0447 for any fees required or overpaid.

Respectfully submitted,

Date: December 22, 2008

By:



Brandon C. Kennedy
Reg. No. 61,471
Biggers & Ohanian, LLP
P.O. Box 1469
Austin, Texas 78767-1469
Tel. (512) 472-9881
Fax (512) 472-9887
ATTORNEY FOR APPLICANTS